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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1351

STEPHEN BERGER, as Commissioner of the Department of Social Services of the State of New York,
Petitioner,

vs.

SUSAN BARTON, on her own behalf and on behalf of CLINT YOUNG, her minor ward,
Respondents,

and

JOHN FAHEY, as Commissioner of Social Services of the County of Albany,
Respondent.

REPLY BRIEF ON BEHALF OF PETITIONER

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REPLY BRIEF ON BEHALF OF PETITIONER

This brief is submitted on behalf of the petitioner State Commissioner of Social Services in reply to the brief of respondents Barton and Young.

I

The March, 1973 memorandum of the Deputy Commissioner for Income Maintenance (Respt. Br., p. 3) has not been set out *in toto.* We attach it hereto as Exhibit "A". That memorandum related to the erroneous effective date of section 402(a) (24) of the Social Security Act and is entirely supportive of petitioner's position.

POOR COPY

II

The Departmental Administrative letter of January 7, 1976 (No. 76 ADM-3) (Respt. Br., p. 3, footnote) stated:

> "II. *Program Implications*
>
> The Social and Rehabilitation Service of the U.S. Department of Health, Education and Welfare recently clarified its requirements for the budgeting of ADC/AABD cooperative cases in December, 1973. This clarification is intended to insure that in converted SSI cases, the income of an AABD recipient was not taken into account in determining eligibility and degree of need in an ADC case which was cooperative with AABD in December, 1973. Therefore, it may be necessary to recompute the December 1973 grant, effective 1/1/74, for purposes of AABD cooperative cases in which income was pro-rated."

We are advised by the State Department of Social Services that the purpose of the Administrative Letter is to clarify what should be done, effective January 1, 1974, for cases which were converted from Aid to the Aged, Blind and Disabled (AABD), to Supplemental Security Income (SSI). The Administrative Letter does not authorize the recomputation of the December, 1973 AABD or AFDC grants for the purpose of altering grant payments for that month. Grant payments for December, 1973 remain unchanged. All that the Administrative Letter does is to instruct the local social services districts that for the purposes of correctly implementing the conversion from AABD to SSI on January 1, 1974, certain changes must be made on the basis of what had been paid in December, 1973. This is made clear by the last sentence above quoted that it may be necessary to recompute the December, 1973 grant effective January 1, 1974.

The Administrative Letter in no way constitutes a withdrawal from petitioner's position that the January 1, 1973 effective date of section 402(a) (24) was erroneous.

III

We cannot speculate, as respondents do, as to the potential exposure that New York and its local social services districts may or may not have because New York pursued its policy of cooperative budgeting during calendar year 1973. We urge that it is better to settle the merits of the controversy now.

CONCLUSION

The Petition for a Writ of Certiorari Should Be Granted.

Dated: April 21, 1976.

Respectfully submitted,

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EXHIBIT A

March 13, 1973 Memorandum of the Deputy Commissioner for Income Maintenance

State of New York Department of Social Services

MEMORANDUM
Form D65-524 (Rev. 11/38)
Formerly BOA-100

TO: Felix Infausto DATE: March 13, 1973

FROM: Gabriel T. Russo SUBJECT:

On March 1, 1973, I discussed with you correspondence received from Commissioner Reed of Monroe County in relationship to implementation of Section 414 of Public Law 92-603, otherwise known as HR-1.

This Section would provide that an individual receiving benefits under Title 16 for AABD would not be regarded as a member of a family for purposes of determining eligibility for that family for public assistance and the AABD recipients income and resources would not be counted as income and resources of a family under the Title.

The amendment was to take place effective January 1, 1973.

I have been advised repeatedly by Social Security Administration that this amendment was an error and that a bill has been drafted and submitted to correct this date. On March 12, 1973, I was advised by Social Security Administration that a bill has not yet been drafted to amend this Section.

At the present time there are several adjustment bills in draft form and will be presented to Congress to adjust and amend HR-1 but as yet this has not taken place.

Social Security did offer that if New York State is served with a law suit in this matter that is to enforce this Section effective January 1, 1973, they would be willing to testify on our behalf as to the intent of this Section namely that it was not to take effect until January 1, 1974.